IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF PENNSYLVANIA (JOHNSTOWN)

DEBRA HEVERLY CAMPBELL, and POHAKU) Civil Action No. 3:16-cv-118-KRG
FUNDING AND INVESTMENT)
CORPORATION, in its capacity as Trustee for the)
2895-201 KALAKAUA LAND TRUST and)
POHAIKEALOHA TRUST, DEBRA HEVERLY)
CAMPBELL AS PRESIDENT OF POHAKU) The Honorable Kim R. Gibson
FUNDING AND INVESTMENT)
CORPORATION, and DEBRA HEVERLY) Electronically Filed
CAMPBELL AND JADE MAKANA HEVERLY-)
CAMPBELL AS BENEFICIARIES OF)
POHAIKEALOHA TRUST,)
)
Plaintiff's,)
)
V.)
)
M&T BANK, COLONY SURF LTD., DAVID)
SPRIEGEL, GERALYN BONILLA, PERI)
SARAC-FLIMAN, WILLIAM E. DENISON, R.)
STEVENS GILLEY, TERRY MULLIN, MURIEL)
PAYNE,)
Defendants	

DEFENDANT TERRY MULLIN'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(2), 12(b)(3), and 12(b)(6)

AND NOW comes Defendant Terry Mullin ("Mullin")¹, by and through his undersigned attorneys, Gordon & Rees LLP, and files the instant Motion to Dismiss the First Amended Complaint of Debra Heverly Campbell, and Pohaku Funding and Investment Corporation, in its capacity as trustee for the 2895-201 Kalakaua Land Trust and Pohaikealoha Trust, Debra Heverly Campbell as president of Pohaku Funding and Investment Corporation, and Debra

¹Defendants Colony Surf, Ltd. ("Defendant Colony Surf"), William E. Denison ("Defendant Denison"), and R. Stevens Gilley ("Defendant Gilley"), collectively referred to as "Colony Surf Defendants" filed a Motion to Dismiss Plaintiff's Amended Complaint on June 20, 2017. See ECF 16 and 17. At that time, Mullin had not been served with the Amended Complaint and Summons in this action. As Mullin was served on August 18, 2017, he files the instant Motion to Dismiss on grounds similar to those set forth in the Colony Surf Defendants' Motion to Dismiss. See ECF 16 and 17.

Heverly Campbell and Jade Makana Heverly-Campbell as beneficiaries of Pohaikealoha Trust

(hereinafter collectively referred to as "Plaintiffs") as set forth herein.

Mullin seeks to dismiss Plaintiffs' First Amended Complaint pursuant to Federal Rules of

Civil Procedure 12(b)(2), 12(b)(3), and 12(b)(6). The reasons supporting this Motion are set

forth in more detail in the accompanying Memorandum of Law filed contemporaneously

herewith.

WHEREFORE, Mullin respectfully requests this Honorable Court dismiss Plaintiffs'

First Amended Complaint with prejudice.

Respectfully submitted,

GORDON & REES LLP

By: /s/ Jessica Lucas

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Counsel for Colony Surf Ltd., William

E. Denison, R. Stevens Gilley, and

Terry Mullin

Dated: September 8, 2017

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of September, 2017, a true and correct copy of Defendant Terry Mullin's Motion to Dismiss Plaintiffs' First Amended Complaint was served via electronic means on all counsel and parties of record:

> John E. Joseph (No. 88818) Michele L. Zerr (No. 201655) REED SMITH LLP Global Customer Centre 20 Stanwix Street, Suite 1200 Pittsburgh, PA 15222 (Counsel for M&T Bank)

Also served by U.S. Mail, postage pre-paid:

Debra Heverly Campbell 11844 Bandera Rd., Suite #200 Helotes, TX 78023 (Plaintiff)

> By: /s/ Jessica Lucas Jessica Lucas, Esq., Id. #311280 ilucas@gordonrees.com 707 Grant Street, Suite 3800 Pittsburgh, PA 15219 Tel.: (412) 577-7400

Fax: (412) 347-5461 Counsel for Colony Surf Ltd., William E. Denison, R. Stevens Gilley, and

Terry Mullin